IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HORACE J. GRIFFIN, Inmate #N-11861,

Plaintiff,

vs.

L.T. JENNINGS,

Defendant. **No. 04-CV-00110-DRH**

MEMORANDUM AND ORDER

HERNDON, District Judge:

On January 28, 2005, the Court conducted a preliminary review of this case pursuant to **28 U.S.C. § 1915A** and dismissed Plaintiff's claims regarding medical care and disciplinary actions against Defendants Maggie Brown, Major Gaetz, L.T. Henten, Guy D. Pierce, and C/O Officer Roy. **(Doc. 44, Mem. & Order dated Jan. 28, 2005)**. On February 22, 2005, Plaintiff filed a motion to reconsider the Court's threshold Memorandum and Order. **(Doc. 47)**.

On April 25, 2005, Magistrate Judge Clifford J. Proud submitted a Report and Recommendation ("Report") proposing that the Court deny Plaintiff's motion for reconsideration. **(Doc. 62)**. The Report was sent to the parties with a notice informing them of their right to appeal by way of filing "objections" within ten days of service of the Report. Plaintiff filed timely objections. **(Doc. 64)**. Since timely objections have been filed, this Court must undertake *de novo* review of the Report. **28 U.S.C. § 636(b)(1)(B); FED. R. CIV. P. 72(b); S.D. ILL. LOCAL R. 73.1(b); *Govas v. Chalmers*, 965 F.2d 298, 301 (7th Cir. 1992)**. The Court may

"accept, reject or modify the recommended decision." ***Willis v. Caterpillar Inc.*, 199 F.3d 902, 904 (7th Cir. 1999)**. In making this determination, the Court must look at all the evidence contained in the record and give fresh consideration to those issues to which specific objection has been made. ***Id.***

Plaintiff brings a motion to reconsider. Strictly speaking, a motion to reconsider does not exist under the Federal Rules of Civil Procedure. ***Hope v. United States*, 43 F.3d 1140, 1142 n.2 (7th Cir. 1994), *cert. denied*, 515 U.S. 1132 (1995)**. Despite this fact, such motions are routinely presented, and this Court will consider them if timely-filed. If filed within ten days of the entry of a judgment or order in the case, the motions are construed as motions to alter or amend under **FEDERAL RULE OF CIVIL PROCEDURE 59(e)**. ***See Britton v. Swift Transp. Co., Inc.*, 127 F.3d 616, 618 (7th Cir. 1997)("the key factor in determining whether a 'substantive motion' is cognizable under Rule 59 or 60 is its timing"); *Mendenhall v. Goldsmith*, 59 F.3d 685, 689 (7th Cir.), *cert. denied*, 516 U.S. 1011 (1995)("any post-judgment substantive motion that is made within ten days of the entry of judgment is deemed a Rule 59(e) motion")**. The Court will presume Plaintiff's motion to reconsider was filed within ten days of the Order he challenges[1] and apply **RULE 59(e)**.

[1]The mailbox rule provides a paper is "filed" at the moment of delivery to the prison authorities, rather than at a later point in time after the authorities had forwarded the notice to the court and the court had formally recorded its receipt. ***See Edwards v. United States*, 266 F.3d 756, 758 (7th Cir. 2001)(mailbox rule applies to motions filed pursuant to Rule 59(e))**. Here, it may be the case that Plaintiff delivered his motion to the prison authorities on February 16, 2005, after the expiration of the 10-day period. Nevertheless, the Court will give Plaintiff the

RULE 59(e) motions to reconsider serve the limited function of allowing litigants "to direct the district court's attention to newly discovered material evidence or a manifest error of law or fact." ***Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996); *see also Divane v. Krull Electric Co., Inc.*, 194 F.3d 845, 850 (7th Cir. 1999)**. The Seventh Circuit has clarified:

> While Rule 59(e) permits parties to bring to the court's attention errors so they can be corrected without the costs associated with appellate procedure, "[t]he rule does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to introduce new evidence or advance arguments that could or should have been presented to the district court prior to the judgment."

***Popovits v. Circuit City Stores, Inc.*, 185 F.3d 726, 730 (7th Cir. 1999)(quoting *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996))**.

Here, the Court finds that Plaintiff has neither presented newly discovered evidence nor identified a manifest error of law or fact. Plaintiff points out that the Court noted in its threshold Order that "[t]he complaint is rambling and Plaintiff's writing is difficult to read." **(Doc. 44, Mem. & Order filed Jan. 28, 2005 at p. 2)**. This is true. However, the Court went on to say that "after a careful reading of the complaint, fortunately supplemented by exhibits consisting of institutional documents, the Court glean[ed] the following information." **(*Id.*)** The Court then summarized, in abbreviated format, the allegations contained in

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benefit of the doubt and apply the more liberal standard under **RULE 59(e)**.

Plaintiff's complaint. Plaintiff's objections, although long, provide no compelling reason for this Court to reconsider its threshold Memorandum and Order. Accordingly, the Court **ADOPTS** the Report **(Doc. 62)** and **DENIES** Plaintiff's motion for reconsideration of the Court's threshold Memorandum and Order. **(Doc. 47)**.

IT IS SO ORDERED.

Signed this 20th day of July, 2005.

/s/ David RHerndon
United States District Judge